

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
SEPTEMBER 5, 2017**

CALL TO ORDER
6:00 pm

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Cal Dyck, Mark Hash and Roger Noble. Kari Nielson, Rachel Ezell and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were approximately 70 people in the audience.

APPROVAL OF MINUTES
6:00 pm

Klempel motioned and Noble seconded to approve the June 6, 2017 minutes as written. The motion passed unanimously.

PUBLIC COMMENT
(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A)
6:00 pm

None

CHANGE IN ORDER OF AGENDA

Hash informed everyone that the order of some of the agenda items would be changed, moving the KGEZ files (Appeal 17-01 and FCU-17-06) to the last two files of the night. He stated there were other files scheduled that would not take as much time.

LOFT 54 LLC (FCU-17-09)
6:02 pm

A request from Jackola Engineering on behalf of Loft 54, LLC for a conditional use permit to establish 18 apartment units in one building on property located at 163 Bando Lane in Kalispell. The subject property is currently developed with one apartment building containing 12 units on approximately 1.7 acres and zoned RA-1 in the Evergreen Zoning District. The property can legally be described as Lot 4 of Cherry Creek Village in Section 4, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

STAFF REPORT
6:02 pm

Ezell reviewed Staff Report FCU-17-09 for the Board.

**BOARD
QUESTIONS**
6:05 pm

None

**APPLICANT
PRESENTATION**
6:05 pm

Bob Erickson-Jackola Engineering-2250 Highway 93 S, Kalispell-stated that this application was for one additional apartment building. All utilities are in place and the only improvements would be to the driveway and parking.

**BOARD
QUESTIONS**
6:05 pm

Klempel asked about paving.
Erickson stated it would be paved.

**PUBLIC
COMMENT**
6:06 pm

None

**STAFF
REBUTTAL**
6:06 pm

None

**APPLICANT
REBUTTAL**
6:06 pm

None

**BOARD
DISCUSSION**
6:06 pm

None

**MAIN MOTION
ON TO ADOPT
F.O.F.
(FCU-17-09)**
6:07 pm

Noble made a motion seconded by Netteberg to accept Staff Report FCU-17-09 as Findings-of-Fact and Approve the Conditional Use Permit.

**BOARD
DISCUSSION**
6:07 pm

None

**ROLL CALL TO
ADOPT F.O.F.
6:07 pm**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL
(FCU-17-09)
6:08 pm**

Noble made a motion seconded by Klempel to accept Staff Report FCU-17-09 as Findings-of-Fact and Approve the Conditional Use Permit.

**BOARD
DISCUSSION
6:08 pm**

None

**ROLL CALL TO
APPROVE
6:08 pm**

On a roll call vote the motion passed unanimously.

****Mayre Flowers-Citizens for a Better Flathead-stated she thought it was important for the Board to follow the agenda as written.****

**ROCKY
MOUNTAIN
BAPTIST
CHURCH
(FCU-17-08)
6:10 pm**

A request by Matt Cearnal on behalf of Rocky Mountain Baptist Church for a conditional use permit for the expansion of an existing conditional use on property located at 2387 Highway 35, approximately 4 miles east of Kalispell. The subject property is currently developed with a church. The applicants are requesting to add a single family dwelling on the subject property containing approximately 4.1 acres and zoned SAG-10 in the Eastside Zoning District. The property can legally be described as Tract 3 in the East ½ of the Northeast ¼ in the Southeast ¼ of Section 2, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
(FCU-17-08)
6:10 pm**

Ezell reviewed Staff Report FCU-17-08 for the Board.

**BOARD
QUESTIONS
6:11 pm**

None

**APPLICANT
PRESENTATION
6:12 pm**

None

**BOARD
QUESTIONS**
6:12 pm

None

**PUBLIC
COMMENT**
6:12 pm

None

**BOARD
QUESTIONS**
6:12 pm

None

**STAFF
REBUTTAL**
6:12 pm

None

**BOARD
QUESTIONS**
6:12 pm

None

**APPLICANT
REBUTTAL**
6:12 pm

None

**BOARD
DISCUSSION**
6:12 pm

None

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-17-08)**
6:13 pm

Klempel made a motion seconded by Dyck to adopt the Finding-of-Fact as written.

**BOARD
DISCUSSION**
6:13 pm

None

**ROLL CALL TO
ADOPT F.O.F.
6:13 pm**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL
(FCU-17-08)
6:13 pm**

Klempel made a motion seconded by Dyck to accept Staff Report FCU-17-08 as Findings-of-Fact and Approve the Conditional Use Permit.

**BOARD
DISCUSSION
6:13 pm**

None

**ROLL CALL TO
APPROVE
6:13 pm**

On a roll call vote the motion passed unanimously.

**JAMES & BETH
JOHNSON
(FZV-17-05)
6:14 pm**

A request by James & Beth Johnson for a zoning variance to property within the Lower Side Zoning District and zoned SAG-5 (*Suburban Agricultural*). The applicant is requesting a variance to Section 5.01.030(2) of the Flathead County Zoning Regulations which states: *No accessory structures except fences or hedges shall be constructed in any front yard.* The applicants would like to construct a shop and guest house in the front yard setback of the lot. The property is located at 105 Smith Lake Road and contains approximately 4.3 acres. The parcel can legally be described as Tract 7A in W2SW4 of Section 15, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
(FZV-17-05)
6:14 pm**

Mussman reviewed Staff Report FZV-17-05 for the Board.

**BOARD
QUESTIONS
6:18 pm**

Noble asked about the topography.

Mussman stated there were some topography issues on the buildable part of the land.

Noble asked when the original structure was built.

Mussman stated the septic was granted in 1978.

Hash asked if the applicants had participated in any of the family transfers or boundary line adjustment done on this property.

Mussman stated he did not believe so.

**APPLICANT
PRESENTATION
6:19 pm**

Mark Johnson-680 Stone Street, Kalispell-stated he was speaking on behalf of the applicant. He explained the history of the property and showed the Board a topography map, explaining there were about 30 feet of fall across the lot. There were also areas on the property with seasonal high ground water.

**BOARD
QUESTIONS
6:25 pm**

Hash asked about any adverse effects this would have on the neighbors.

Johnson stated that the proposed structures would not be out of character with the development in the area.

**PUBLIC
COMMENT
6:26 pm**

None

**STAFF
REBUTTAL
6:26 pm**

None

**APPLICANT
REBUTTAL
6:26 pm**

None

**BOARD
DISCUSSION
6:26 pm**

None

**MAIN MOTION
TO ADOPT F.O.F.
(FZV-17-05)
6:26 pm**

Netteberg made a motion seconded by Klempel to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION
6:26 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
6:26 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO APPROVE
(FZV-17-05)
6:26 pm**

Netteberg made a motion seconded by Klempel to accept Staff Report FZV-17-05 as Findings-of-Fact and Approve the Variance.

**BOARD
DISCUSSION
6:27 pm**

None

**ROLL CALL TO
APPROVE
6:27 pm**

On a roll call vote the motion passed unanimously.

**DON & PAUL
HERBERT
(FCU-17-10)
6:27 pm**

A request from Sands Surveying on behalf of Don & Paul Herbert for a conditional use permit for the placement of a Cellular Communication Tower at a property located at 1291 Belton Stage Road in the Middle Canyon Zoning District. A Cellular Communication Tower is a Public Utility Structure and a Minor Land Use in the Middle Canyon. Section 5.13 of the Flathead County Zoning Regulations (FCZR) *outlines requirements to all wireless telecommunications facilities regardless of the zoning district or overlay in which they are located.* Section 5.13.115(C) requires a conditional use permit for towers exceeding sixty feet within ¼ mile of a State or Federal Highway. Because a Minor Land Use Review is similar to a Conditional Use Permit which requires a public hearing, a Conditional use Permit will be required and will include elements of review for both a Minor Land Use Review and a Conditional Use Permit. The subject property can legally be described as Tract 7B in Section 3, Township 31 North, Range 19 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
6:28 pm**

Nielsen reviewed Staff Report FCU-17-10 for the Board.

**BOARD
QUESTIONS
6:33 pm**

Hash asked if the neutral color was an issue with the F.A.A.

Nielsen stated no.

Dyck asked about the lighting on the tower.

Nielsen stated the F.A.A. does not require lighting up to 190 feet.

**APPLICANT
PRESENTATION
6:34 pm**

Bill Ray-90 W Madison, Belgrade and Dave Girling-T-Mobile-3445 Blackbird Dr., Bozeman-stated they would like to make the towers as unobtrusive as possible and the monopole was the least obtrusive.

**BOARD
QUESTIONS**
6:35 pm

Netteberg stated there was a tower in Whitefish that looked like a tree, was that an option.

Ray stated possibly, however, he couldn't get the height needed with that design. He stated the objective was to get co-location on the tower, so there were not data towers scattered throughout the canyon.

Noble asked who else had signed up to use the tower.

Ray stated Velocity Communications out of Kalispell.

**PUBLIC
COMMENT**
6:36 pm

Gary Kaufman-Box 583, West Glacier, MT-stated he had submitted a 70 page comment. He talked about the danger to helicopters flying in the area for both public and emergency use. The view shed was also a concern. He stated the applicant does not have legal access to the property for commercial use.

Hash asked what the chances of the F.A.A. requiring lighting in the future were.

Kaufman stated that would depend on the appeal.

Hash asked about the definition of view shed.

Kaufman explained.

Hash asked staff to explain the two (2) application connect.

Nielson stated that the conditional use was required because the proposed towers were within a quarter of a mile of Highway 2; if it was outside of that corridor it would have been a minor land use and would not have required a public hearing. The conditional use would allow for a 103 foot tower and the variance application would allow for the 150 foot tower.

Terry Divoky-775 Belton Stage Road, West Glacier, MT-stated her main concerns were for helicopter safety, especially that of ALERT and Three Bear and the easement stating that it was for residential use only.

Cathi Beers-Great Northern Resort-12127 Highway 2 E, West Glacier-stated that one of the biggest draws to her business was wedding venues. She stated that the tower would be a backdrop in all their wedding pictures.

Paul De Toni-12235 Highway 2 E, West Glacier-stated there was a more appropriate place to put the towers other than the gateway to Glacier National Park. He thought it was a safety issue to birds and helicopters alike.

Lindsay Bengson-stated she was a neighbor and had some rental chalets in the area. She talked about this proposal being against the Canyon Area Land Use Regulatory System (C.A.L.U.R.S.) plan.

Sally Thompson-Box 302/232 Highland Blvd, West Glacier, MT – stated that one of the things that went into the C.A.L.U.R.S. plan was preserving the vistas.

Darwon Stoneman, Glacier Raft Co-Box 210, West Glacier, MT-was concerned

with the air traffic in the corridor. He was also concerned that due to the amount of air traffic the F.A.A. would require lighting of the tower in the future.

Mayre Flowers-Citizens for a Better Flathead-Box 771, Kalispell-supported the testimony already given. She also wanted to include for the record studies that indicate the impact on property values due to inappropriately place cell phone towers.

Richard Murphy-1270 Belton Stage Road, West Glacier, MT-stated that this project was not necessary, he had good communication with AT&T and Verizon. He was also concerned with the view shed into Glacier Park.

Carole Murphy-1270 Belton Stage Road, West Glacier, MT-was also concerned with the view.

**APPLICANT
REBUTTAL
7:06 pm**

Dave Girling-T-Mobile-stated that the towers would be placed in a ten foot depression so none of the ground equipment would be visible. He talked about the need for the cell tower and T-Mobile expanding services in Montana.

Bill Ray-talked about getting completion in the area for AT&T and Verizon.

Paul Herbert-4182 Freeman Lake Rd-Oldtown, ID-stated that he had been in the cell phone business for 25 years. He stated that lighting had already been addressed and would not be required.

**STAFF
REBUTTAL
7:13 pm**

None

**BOARD
QUESTIONS
7:13 pm**

Netteberg asked if T-Mobile could co-habitat on another tower.

Girling stated not for the coverage T-Mobile wanted.

Hash asked if the applicant would still build if the variance was not granted.

Girling stated it would be appropriate for one carrier; however, another tower would have to be built for additional carriers.

Hash asked if the planning office looked at the neighborhood impact to the view shed.

Nielsen stated the staff report needed to address traffic, noise or vibration, dust, glare, heat, smoke, fumes, gas, odors and inappropriate hour of operation.

Hash asked if the planning office had any comment after listening to the neighborhood concerns.

Nielsen stated she understood the neighbors' concerns and the Board could address those in the Findings of Fact.

Hash asked if the cell tower was necessary.

Nielsen stated the planning office reviews land uses that are applied for not whether it is necessary or not.

Hash asked about the easement.

Nielsen stated that would be a question for the applicant.

**BOARD
DISCUSSION
(FCU-17-10)
7:21 pm**

The Board and the applicant discussed the easement issue, the view shed, the economic impact, safety concerns and the potential for future lighting at length.

The Board and planning staff discussed amending the Findings of Fact at length.

**MAIN MOTION
ON TO AMEND
F.O.F.
(FCU-17-10)
7:31 pm**

Noble made a motion seconded by Klempel to amend the Findings of Fact as follows:

1. The site appears *to be unsuitable* for the proposed use because ~~the Middle Canyon does not have applicable lot coverage, the proposed structures meet applicable setbacks, there appears to be adequate access via a county road, and there are currently no environmental impacts present that would affect the placement of the towers~~ *there is some question of legal access to the property.*
3. The fencing, screening, signage and lighting on the subject property *may be unacceptable because the FAA may require flashing lights* ~~appear adequate because there are no screening requirements for cellular communication towers and any lighting, fencing, and signage shall be conditioned to adhere to Section 5.13 of Flathead County Zoning Regulations and all applicable Federal Aviation Administration requirements.~~
5. The proposed use *may be unacceptable to public services because the tower height may interfere with emergency services* ~~appears to have acceptable impacts on public services and facilities because the Coram-West Glacier Fire Department and Flathead County Sheriff could provide services to the subject property with an acceptable response time and the property is accessed by Belton Stage Road.~~
6. The immediate neighborhood impact from the proposed use *may be unacceptable based on the testimony from adjacent property owners because the tower will extend above the adjacent ridgeline* ~~is acceptable because the proposed facility will not create excessive traffic, noise, vibration, dust, glare, heat, smoke, fumes, gas or odors, and hours of operation are not applicable for an un-manned cellular communication tower.~~

**BOARD
DISCUSSION
7:35 pm**

None

**ROLL CALL TO
ADOPT F.O.F. AS
AMENDED
7:35 pm**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
DENIAL
(FCU-17-10)
7:36 pm**

Noble made a motion seconded by Dyck to accept Findings of Fact as amended and deny the conditional use application.

**BOARD
DISCUSSION
7:36 pm**

None

**ROLL CALL TO
DENY
7:36 pm**

On a roll call vote the motion passed unanimously.

The Board took a short break.

**DON AND PAUL
HERBERT
(FZV-17-04)**

A request from Sands Surveying on behalf of Don & Paul Herbert for a zoning variance to property located at 1291 Belton Stage Road within the Middle Canyon Zoning District. The applicants are requesting a variance to Section 5.13.115 (C) Performance Standards for Cellular Communication Towers which states: *A wireless telecommunication tower located within one-quarter (1/4) mile from the Centerline of the right-of-way of all State and Federal highways shall: (C) If a wireless telecommunications tower exceeds sixty (60) feet in height or is located more than sixty (60) feet from the edge of the right-of-way of a State or Federal highway, it may be permitted as a conditional use provided that the tower be set back twenty (20) feet from the edge of the right-of-way for every one (1) foot in height in excess of sixty (60) feet.* Based on the distance from U.S. Highway 2, the applicants would be permitted to have a 103 foot tower subject to the conditional use permit. The applicants have requested the variance to place a 150 foot tower on the site. The subject property can legally be described as Tract 7B in Section 3, Township 31 North, Range 19 West, P.M.M., Flathead County, Montana.

THIS APPLICATION WAS NOT HEARD AS THE CONDITIONAL USE APPLICATION WAS DENIED.

**LINDA
NEWGUARD
APPEAL -17-01
7:50 pm**

An appeal by Linda Newgard regarding interpretations of the Flathead County Zoning Regulations (FCZR) made by the Zoning Administrator during the consideration of a request for a Conditional Use Permit by John Hendricks on behalf of James Hanson (FCU-17-06) to place a '*communication tower mast*' on property located at the northeast corner of Farm-to-Market Road and Clark Drive intersection near Kalispell, MT. The subject property is approximately 115.2 acres and can legally be described as Tract 3B in Section 16, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana.

**APPELLANT
PRESENTATION
(APPEAL 17-01)
7:51 pm**

Linda Newguard-905 Clark Drive, Kalispell-gave the history of her property and the reason for her appeal. She felt the staff report did not give adequate and accurate consideration to the West Valley Neighborhood Plan (WVNP). The WVNP and the Montana Supreme Court agreed that the West Valley District was zoned residential. Commercial enterprises were not allowed in residential zones. She felt the staff report did not evaluate three critical review criteria, site suitability, appropriateness of design, and neighborhood impact of noise and vibration. Newguard stated that granting a conditional use for a commercial activity in a residential zone amounted to a zone change. Commercial uses in the WVNP were very specifically limited to one convenient store in one specific location and to home businesses. This limitation was a carefully debated and adopted part of the WVNP in large part to retain the rural residential and agricultural character of the plan area, and the property values and rights of those investing in this plan area. She felt it was also detrimental to property values.

**STAFF
PRESENTATION
(APPEAL 17-01)
8:06 pm**

Mussman gave the history of the appeal. He addressed the three main points of the appeal as outlined in his 'Memo to the Board' (see attached).

**BOARD
QUESTIONS
8:12 pm**

None

**PUBLIC
COMMENT
8:13 pm**

Don Murray-138 First Ave West, Kalispell-stated he was the attorney representing Ms. Newguard in this appeal. Murray handed out an outline of points to the Board (see attached).

Bruce Tutvedt-1333 Church Drive, Kalispell-stated he was involved in the creation of the West Valley Neighborhood Plan (WVNP). He stated the WVNP was not a regulatory document but wanted to talk about interpreting the zoning regulations and definitions. He talked about his own lawsuit stating the Supreme Court ruled the West Valley Zoning District was residential. He spoke at length about the WVNP prohibiting commercial uses and definitions.

Alan Wendt-940 Clark Drive, Kalispell-handed out a packet (see attached). He stated he agreed with previous speakers and said the towers could not meet setback requirements as required in section 5.13 of the zoning regulations.

Mayre Flowers-Citizens for a Better Flathead-35 4th Street West, Kalispell-Handed out a packet opposing the zoning interpretation (see attached).

Charlene Iannucci-597 Clark Homestead Ln, Kalispell-stated that the definitions talked about above were confusing, however, when the applicant applied for his antennae structure, it was with the wireless telecommunications bureau.

Tom Clark-590 Clark Homestead Dr., Kalispell-served on the West Valley Advisory Board for 4 years. He stated that while he was on the Board it was clear that commercial development in the district was not wanted.

Glen Cox-805 Clark Drive, Kalispell-stated that due to the elevation on the applicants' property it would raise the towers much higher than the 325 feet. He was also concerned about the dust on the road and the flashing lights.

**BOARD
QUESTIONS
9:06 pm**

Dyck spoke to the public and reminded them that the conditional use permit application was not being considered at this time, only the appeal of the Zoning Administrators interpretation.

**STAFF
REBUTTAL
9:07 pm**

Mussman stated that the setback requirement for cell towers only comes into play when they are within a quarter of a mile of a state or federal highway. He talked about the Supreme Court decision that was referenced by Tutvedt quoting the Court "the regulation shows that they were designed primarily to effectuate a residential zoning district," (talking about the West Valley Zoning District). In the rest of the Flathead County Zoning Regulations, in the agricultural zones- AG-80, AG-40 and AG-20 a communication mast is a conditional use. He spoke to the board about there being a lot of material handed to them that evening and stated it would be helpful to the planning office whatever decision they make.

**BOARD
DISCUSSION
9:12 pm**

Noble asked Mussman to reiterate the main points of the appeal.

Mussman cited three main points. The first was that the neighborhood plan not only discouraged but prohibited commercial development. The second was that the granting of a conditional use permit would be a zone change. The third was that the WVNP and subsequent development regulation did not encourage commercial activity to this extent.

The Board discussed these issues at length.

Dyck stated that the Board did not feel a zone change would happen with the

granting of the conditional use, however, they did feel that the West Valley Neighborhood Plan was a residential area. With that definition the communication tower allowed in that area could only be noncommercial. The reason for this decision was that when you look at the case law and the history of what the Supreme Court had stated, it stated clearly that the WVNP area was a residential area.

With that being understood, only noncommercial communication towers would be allowed as per Section 5.01.020 of the zoning regulations.

**MAIN MOTION
ON APPEAL
(APPEAL 17-01)
9:40 pm**

Noble made a motion seconded by Netteberg to grant the Appeal 17-01.

**BOARD
DISCUSSION
9:40 pm**

None

**ROLL CALL TO
GRANT APPEAL
9:40 pm**

On a roll call vote the motion passed unanimously.

**JAMES HANSON
BY JOHN
HENDRICKSON
KGEZ
(FCU-17-06)
9:41 pm**

A request from John Hendricks of KGEZ AM 600 on behalf of James Hanson for a conditional use permit for the placement of a '*Communication tower, mast*' on property located at the northeast corner of Farm-to-Market Road and Clark Drive intersection near Kalispell, MT. The subject property is approximately 115.2 acres and can legally be described Tract 3B in Section 16, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. **This agenda item was reviewed by the West Valley Land Use Advisory Committee at a legally noticed meeting held on Tuesday, May 23, 2017 @ 7:00 pm at the Stillwater Grange, 1370 Old Reserve Drive in Kalispell.**

**THIS AGENDA ITEM WAS NOT HEARD AS THE APPEAL WAS
UPHELD**

OLD BUSINESS
9:48 pm

Nielson updated the Board on FZV-17-01 Betsy Morrison stating the applicant was making progress on moving the mobile home to come into compliance.

NEW BUSINESS
9:51 pm

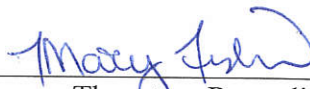
None

ADJOURNMENT
9:51 pm

The meeting was adjourned at approximately 9:51 pm on a motion Noble. The next meeting will be held at 6:00 pm on October 3, 2017.

For 

Mark Hash, Chairman

For 

Danene Thornton, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 10 / 3 /17